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Sent: Tuesday, May 16, 2000 11:49 AM  
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Subject: Re: CJS and Section 109

The CJS committee has asked us to do a little digging on a couple of the arguments raised against the language in the supplemental dealing with Section 109 and tobacco litigation.

Specifically:

1) Senator Durbin stated that it was "unprecedented that we would stop a lawsuit being brought by the Department of Justice by taking money away from them, and it would jeopardize literally billions of dollars in litigation that is being -- that the U.S. Department of Justice is involved in if it went forward."

Question:

Is this unprecedented? And what is the real impact if we are successful?

2) the point was made by Chairman Stevens that the original intent of 109 was to allow DoJ to recoup costs incurred when it was asked to defend other agencies. In particular, the DoD had been involved.

Durbin raised a different view:

"United States versus Johnson Exxon Wright, Getty Petroleum Company. Under this case the United States has already recovered over \$218 million and has returned it to the Department of the Interior for \$197,000 to support the lawsuit. It is money that is being brought in from oil companies for drilling on Federal land."

Question: How many times has 109 been used in order to prosecute? What was the cost to other agencies for this use? Has 109 ever been used previously to get around the intent of Congress?

Some other questions are:

How many times has 109 been used in total, and how much money has been transferred from other agencies?

Has 109 ever been used to transfer such a large amount (almost \$8 million) as it was in this instance?

We need to be ready for this fight on the floor. Let me know your thoughts.